IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P. (PD) No.218 of 2021
and
C.M.P.No.2040 of 2021

1.Krishanth,
S/o.Pommusamy,

2.Minor Nishanth
S/o.Ponnusamy,
(Rep.by next friend
paternal grand mother palaniammal)

...Petitioners

Vs

1.Ponnusami

2.The Tamil Nadu Mercantile Bank Limited,
Rep. through its Branch Manager,
D.No.40A, Erode Road,
Perumanallur,
Avinasi Taluk,
Tiruppur District.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 04.06.2020 passed in I.A.No.3 of 2019 in O.S.No.264 of 2018, on the file of the Sessions Judge, (Fast Track Mahila Court), Namakkal.

For Petitioners : Mr.M.Prem Kumar for
Mr.S.Senthil

ORDER

This petition has been filed against the order dated 04.06.2020 made in I.A.No.3 of 2019 in O.S.No.264 of 2018 by the learned Sessions Judge, Fast Track Mahila Court, Namakkal, allowing the application filed under Order 1 Rule 10 CPC, seeking to implead the petitioner therein as second defendant in the main suit.

2. The petitioners herein are the plaintiffs. They have filed a suit in O.S.No.264 of 2018 against the first respondent herein/defendant in the suit for partition of the suit scheduled mentioned property. In the suit, the defendant remained ex-parte. While so, the second respondent herein, who is the third party, came forward with an Interlocutory Application in I.A.No.3 of 2019 under Order 1 Rule 10 CPC, seeking its impleadment as second defendant in the suit.

3. According to the second respondent, the third respondent along with two other partners has obtained Rs.3,00,00,000/- as cash credit loan and Rs.5,00,000/- cheque purchase loan from the second respondent

bank and as a security, the first respondent/defendant mortgaged the suit property by entering into a registered agreement relating to the deposit of title deeds. After availing the loan, the first respondent/defendant and other two borrowers have failed to repay the loan amount. In such circumstances, the second respondent bank initiated proceedings under the SARFAESI Act and a notice for public auction of the suit property has also been issued by the bank. The District Collector had also passed the proceedings dated 07.12.2018 for taking possession of the suit property by the second respondent bank. Therefore, since the interest of the second respondent bank is involved in respect of the suit scheduled property, the second respondent bank has moved the application seeking its impleadment.

4. The above said petition was registered by the petitioners herein/plaintiffs inter alia contending that the suit property is an undivided Hindu joint family property and being the legal heirs, the petitioners herein have shares in the suit property and that they were not aware of the fact that the first respondent/defendant availed a loan and mortgaged the property in favour of the bank. Therefore, the application

filed by the second respondent bank is not maintainable, since the partition is within the family members.

5. On consideration of pleadings set forth by both the parties and the materials placed before it, the Court below, by order dated 04.06.2020, allowed the impleading application. Aggrieved by the same, the petitioners are before this Court.

6. On a perusal of the order passed by the Court below, it would reveal that the Court below has considered every aspect of the matter in detail and taking into consideration that the property has already been mortgaged with the second respondent bank by the first respondent/defendant having availed huge loan and that as against the said suit property, SARFAESI proceedings were also initiated and the District Collector has also passed proceedings ordering for taking physical possession of the property. Therefore, the Court below is of the view that the second respondent bank is a necessary party in the suit, in order to enable the Court to adjudicate and settle all the questions involved and to avid multiplicity of proceedings. The view of the Court

below is a well considered one and this Court does not find any infirmity or illegality therein in order to interfere with the same. In fact, if the suit is decreed without being impleading the second respondent bank, the rights and interest of the second respondent bank would be prejudiced, since the property has already been mortgaged by the first respondent/defendant, who is none other than the father of the petitioners herein. Therefore, the Court below has rightly considered the issue and ordered impleadment of the second respondent bank as second defendant in the suit, for the purpose of effective adjudication of the matter.

6. In view of the above, this Court does not find any merit in this Civil Revision Petition and accordingly, the same stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

16.02.2021

Index:Yes/No
Speaking order/Non-Speaking Order
sbn

V.BHAVANI SUBBAROYAN, J.

sbn

To

The Sessions Judge,
Fast Track Mahila Court,
Namakkal.

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